

DECISION



12066 *Kirchpatrick*
PLT
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194034

DATE: November 20, 1979

MATTER OF: Julie K. Albrecht and Barbara A. Butler
- Entitlement to Continuation of Pay
After Separation

DIGEST:

DLG03/61 Two former employees of FBI were injured while still employed by agency. Office of Workers' Compensation Programs, designee of Secretary of Labor, whose determination in allowing or denying payment of compensation for job-related injuries is final and conclusive, determined that employees' pay be continued during period of disability, not to exceed 45 days, even though employees are no longer on agency rolls. FBI did not controvert claims for continuation of pay, (COP). Claimants may be paid COP from appropriated funds of agency for period not in excess of 45 days.

REQ

AGC00102 This decision is in response to a request by Mr. D. E. Cox an authorized certifying officer of the Federal Bureau of Investigation (FBI), Department of Justice, for an advance decision as to the procedure to be followed in providing continuation of pay (COP) to two former employees of the agency under the provisions of the Federal Employees' Compensation Act, 5 U.S.C. § 8101 et seq., as amended. The main issue is whether it is proper to pay continuation of pay to the two employees after they have left the rolls of the agency.

The certifying officer reports that two Special Agent trainees, Julie K. Albrecht and Barbara A. Eutler, were injured while undergoing training. Ms. Albrecht was injured on October 2, 1978. She filed a notice of injury and claim for continuation of pay (Form CA-1) on October 16, 1978. She was examined by a doctor on October 17, 1978, and her regular pay was continued for two hours on that day. Ms. Albrecht was removed from her position on October 27, 1978, for failure to achieve satisfactory firearms scores. She had used no additional COP. Ms. Butler was injured on August 25, 1978. She reported her injury to the FBI and received treatment for it. During the period August 28 through August 31, 1978, her salary was continued for a period of 26 hours as a result

~~007832~~

110883

B-194034

of her injuries. She voluntarily resigned for personal reasons on August 31, 1978. On September 1, 1978, she filed Department of Labor Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, stating that she had suffered a stress fracture of the left leg while participating in physical training.

With respect to Ms. Butler, by letter dated October 11, 1978, subsequent to her voluntary resignation from the Bureau, the Office of Workers' Compensation (OWCP), Department of Labor, informed the FBI that they had received Form CA-1 reporting Ms. Butler's injury and the agency's response to the evidence submitted. The OWCP determined that the facts of the injury and employment supported the employee's contention that she had sustained a traumatic disabling injury in the performance of duty and that her pay should be continued for the period of disability, not to exceed 45 days. We have been advised by FBI officials that the OWCP, by a similar letter, made the same determination with respect to the claim of Ms. Albrecht for COP.

Subsequent to their separations from the Bureau, both employees requested additional continuation of pay payments under the applicable provisions of the Federal Employees' Compensation Act. The FBI contacted the Advisory Services Section of OWCP and was advised that it should grant additional continuation of pay to the claimants if their injuries were work-related traumatic injuries, properly reported within the prescribed notification period, and there was medical evidence that the disabilities caused by the injuries continued. The FBI was advised that if these conditions were met, such payments should continue for the full 45-day entitlement period even though the individuals involved had been separated from the agency. Finally, the FBI was advised that it was not necessary that the two employees be in a COP status at the time of separation.

Based upon the advice from OWCP, internal FBI approval was obtained to pay COP to Ms. Butler and Ms. Albrecht. However, the FBI Voucher-Payroll Section was unable to

ascertain how, within pertinent Federal pay regulations, monies such as COP should be paid to an individual no longer on active Federal rolls and there was doubt whether such payments could be made from the Bureau's appropriated funds. The FBI certifying officer, therefore, requested our advice on the following questions concerning the two claims:

- (1) Whether the claims are proper for payment from the appropriated funds of the Bureau to employees no longer on the agency rolls, and
- (2) If the claims are proper for payment, should gross pay be subject to deductions for retirement, health benefits, insurance, and Federal, State, or local taxes?

Continuation of pay is authorized by the Federal Employees' Compensation Act, as amended by Public Law No. 93-416, September 7, 1974, 5 U.S.C. § 8118 (1976). This section provides that if an employee has filed a claim for a period of wage loss due to a traumatic injury on the job, continuation of pay "shall be furnished for a maximum period of 45 days without a break in time unless controverted under regulations of the Secretary (of Labor)." (Parenthesis supplied). The purpose of this measure is to sustain the injured employee's ordinary income without the time lag and paperwork required to determine whether the employee has a valid claim for compensation. 5 U.S.C. § 8118(d) provides that if an employee's claim is denied by the Secretary of Labor, the amount of continuation of pay previously paid shall, at the option of the employee, be charged to sick or annual leave or shall be deemed an overpayment of pay and allowances under 5 U.S.C. § 5584.

The Secretary of Labor has promulgated regulations governing continuation of pay in 20 C.F.R. § 10.200 et seq., (1976). Section 10.201 provides that an employee who sustains a disabling, job-related traumatic injury is entitled to continuation of regular pay up to 45 days, unless such right is controverted by the employing agency. The employing agency may controvert an employee's claim and

terminate his right to continuation of pay under any one of the nine circumstances listed at 20 C.F.R. § 10.202(a) (1976). In all other cases in which the employing agency controverts an employee's right to continuation of pay, section 10.202(b) specifically provides that the employee's regular pay shall not be interrupted during the 45-day period unless the controversion is sustained by the Office of Workers' Compensation Programs and until the employing agency is so notified. See Matter of Walter E. Blank, B-194187, May 9, 1979, published at 58 Comp. Gen. 507.

In the instant case, the FBI has not controverted the claims of the two employees for COP benefits under any one of the nine circumstances listed in the regulations, and it has paid COP benefits to each of the claimants while they were still on the rolls of the agency.

The Federal Personnel Manual, chapter 810, section 3-2a (prepared for inclusion by CWCP), provides as follows:

"An employee who sustains a disabling, job-related traumatic injury is entitled to continuation of regular pay for a period not to exceed 45 days. However, in no event shall this be construed as requiring continuation of a person's employment beyond the date it would have terminated had the employee not been injured. The agency must continue the injured employee's pay unless the claim falls in one of the categories listed in (2) or (3) below."

The reference to (2) and (3) pertain to controversion and stopping of the employee's pay by the agency if the claim falls into one or more of the nine circumstances enumerated in 20 C.F.R. § 10.202(a).

Since the above provision is not entirely clear as to the entitlement of a former employee of an agency to COP, we consulted with the Department of Labor on this point. The Deputy Associate Solicitor for Employee Benefits has advised

this Office that the Federal (FECA) Procedure Manual issued by OWCP for use of its Claims Examiners provides for the payment of COP to a person who is no longer on the rolls of a Federal agency. Status as an "employee" is determined at the time of injury. If a person sustains a covered injury while employed by an agency, makes a timely report of the injury and files a timely claim for COP, and there is medical evidence that the injury is continuing, then the person is entitled to COP for a period not in excess of 45 days and the entitlement is not terminated by the employee's leaving the agency.

The Secretary of Labor or his designee, the Director, Office of Workers' Compensation Programs, has the authority to administer and decide all questions with respect to compensation for work injuries sustained by employees of the Government. 5 U.S.C. § 8145. The action of the Secretary of Labor or his designee in allowing or denying a payment of compensation for job-related injuries is "(1) final and conclusive for all purposes and with respect to all questions of law and fact; and (2) not subject to review by another official of the United States or by a court by mandamus or otherwise." 5 U.S.C. § 8128.

In light of the broad authority of the Secretary of Labor or the Director, OWCP, to decide questions under the Federal Employees' Compensation Act and to make final determinations on allowing or denying payments under the Act, we believe that payments of appropriated funds made in accordance with the regulations promulgated by the Department of Labor, and the guidelines which appear in the Federal (FECA) Procedure Manual issued by the Director, OWCP, are proper. We also point out that 5 U.S.C. § 8128 provides that "[c]redit shall be allowed in the accounts of a certifying or disbursing official for payments in accordance with that action [i.e., by the Secretary of Labor or his designee]."

Accordingly, Ms. Albrecht and Ms. Butler may be paid additional continuation of pay benefits from the appropriated funds of the FBI for a period not to exceed 45 days, even though the individuals involved are no longer on the agency's rolls, if such benefits are otherwise proper under the statute and the governing regulations.

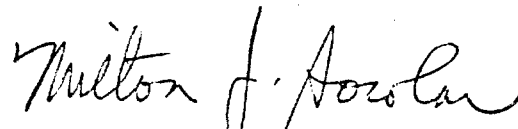
B-194034

In that regard, the agency should obtain a determination from the OWCP as to Ms. Albrecht's entitlement to continuation of pay since she was in other than a COP status for substantially the entire period after her injury and prior to the date of separation.

With respect to Question No. 2 propounded by the FBI concerning deductions from continuation of pay, 20 C.F.R. § 10.200(b) provides:

"* * * pay continued under this subpart
* * * shall be subject to all applicable
taxes and other payroll deductions."

See also subchapter 3, chapter 810, Federal Personnel Manual. Should further clarification be needed as to deductions for retirement, health benefits, and life insurance, the FBI should consult the Office of Personnel Management which has jurisdiction over those matters.



For The Comptroller General
of the United States